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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

No. ------

U.S. BULK CARRIERS, INC.,

*Petitioner,*

v.

DOMINIC B. ARGUELLES,

*Respondent.*

(ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT)

## BRIEF IN OPPOSITION

### STATEMENT OF FACTS

The respondent was on Shipping Articles for a six months voyage which expired about February 2, 1966.

Shortly before February 2, 1966 and while the vessel was in a port in Taiwan and was about to sail for South Vietnam, the respondent had demanded to be discharged and paid off; also, on the same date, he asked for a draw against wages due him. All requests were refused.

Respondent repeated his demand for discharge and pay-off on February 3, 1966, when the vessel had arrived at Cap St. Jaques, in South Vietnam, and was again refused. It is apparent that there was a delay in movement caused by congestion due to the presence of other ships in Saigon

harbor. However, the captain failed to conform to the procedures required to show the crew that pratique (clearance) was refused by the S. Vietnam Government [Article III, Section 2 of Agreement; see Petitioner's Appendix, Page 24(a)].

Respondent asked for shore leave about February 3, 1966 and this was refused and he was restricted aboard ship and he remained so restricted until February 13, 1966 when he was finally granted shore leave. But his request on the same date for discharge and to be paid off was again refused.

The vessel finished unloading its cargo in South Vietnam about February 18, 1966.

Respondent was released from the vessel on February 17, 1966 but over respondent's objections, was refused the balance of wages due him in American dollars (except $50.00 for expenses) and instead was given a voucher which respondent was to present to the petitioner when he arrived at the company's office in Galveston, Texas on February 22, 1966.

The petitioner refused him payment of certain overtime items claimed by respondent and referred him to his union for the handling of the claim. The union in turn referred him to its agent in Yokohama, Japan. Finding it impractical and frustrating to deal long distance with the agent in Japan, respondent filed suit.

Respondent sued, among other items, for overtime wages and for penalties in the delay of the payment of his wages and overtime in pursuance to federal statutes (46 U.S.C.A., Sections 596, 597) which provide for prompt payment of draws against wages earned during the course of the voyage and which provide for prompt payment of wages at the end of the voyage and for penalties for delay.

## QUESTION

Should this Court grant certiorari in this case involving the application of the federal statutes (46 U.S.C.A., Sections 596, 597), providing for prompt payment of seaman's wages?

(A) Does the grievance machinery of the collective bargaining agreement in this case supersede these federal statutes?

## THIS COURT SHOULD NOT EXERCISE ITS JURISDICTION

Review on a writ of certiorari, while in the sound judicial discretion of the Court, is reliant mainly, in a civil case such as this one, on a showing that the circuit court decision is in conflict with that of another circuit or is in conflict with applicable decisions of this Court. 28 U.S.C.A., Section 1254; 28 U.S.C.A., Sup. Ct. Rule 19(1)(b).

Nowhere does the petitioner's brief announce such conflicting decisions.

They cite four Supreme Court decisions, namely, *Johnson v. Isbrandtsen Co., Inc.*, 343 U.S. 779, 72 S. Ct. 1011, 96 L. Ed. 1294; *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 97; *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 85 S. Ct. 614; and *Vaca v. Sipes*, 386 U.S. 171, 87 S. Ct. 903, 17 L. Ed. 2nd 842. The *Johnson* case, *supra*, stands for the general principle which is undisputed, namely that a seaman is entitled to the prompt payment of his wages rightfully due him under the said statutes and that these statutes are to be liberally construed in favor of the seaman. *The Pullman Co.* case is irrelevant here and holds simply that in the facts of that case the state law instead of the federal law should be applied.

The *Maddox* and *Vaca* cases, *supra*, hold that where an employee seeks to sue his employer and/or his union on

account of an alleged breach of his collective bargaining rights *emanating from a collective bargaining contract* between his employer and his union he must first show that he has attempted to pursue the contract grievance procedure as his mode of redress.

The petitioner cites certain cases purporting to show that the courts have been applying the principles approved in *Maddox* and *Sipes* to the maritime area of the law. Reference is made in its brief to *Freedman v. National Maritime Union of America*, 347 F. 2d 167 (2 Cir. 1965), cert. denied 383 U.S. 917 (1966), and *Brandt v. U. S. Lines*, 246 F. Supp. 982 (S.D. N.Y. 1966). These cases do not involve suits under the federal seaman's prompt wage payment statutes, as does the case at bar, but instead involve claims of improper discharge from employment *where the rights stem exclusively from the collective bargaining agreement and not from a federal statute.* Consequently, the decisions the petitioner cites do not show that the *Arguelles* decision was rendered in conflict with the decision of another circuit on the same matter or has decided a federal question in a way in conflict with applicable decisions of this Court.

Finally, petitioner seeks to employ some bizarre theories to justify consideration of its application for certiorari, namely that: (1) this Court should invoke the doctrine of "equitable abstention" in applying the aforementioned federal seaman's wage statutes in favor of the operation of the collective bargaining agreement; and (2) this Court should grant certiorari where there is a dissenting opinion in the decision appealed from.

It cites no cases to support these novelties in reference to the said federal statutes because there are none. The points are obviously outside the scope of the aforementioned statute and rule affecting certiorari and are therefore legally unsound.

## ARGUMENT

### The Court of Appeals Did Not Err in its Order Reversing the District Court.

1. *The Seaman Has The Right To Prompt Payment Of His Wages.*

This right derives from a sound public policy which is to encourage men to go to sea as merchant mariners. Recently this Court spoke of "the maintenance of a Merchant Marine for the commercial service and maritime defense of the nation by inducing men to accept employment in an arduous and perilous service". *Calmar S.S. Corp. v. Taylor,* 303 U.S. 525, 528, 58 S. Ct. 651, 653, 82 L. Ed. 993.

The federal seaman's wage statutes, 46 U.S.C.A., Sections 596 and 597 implement this governmental policy and they have been vigorously and liberally interpreted in favor of the seaman. *Collie v. Ferguson,* 281 U.S. 52, 50 S. Ct. 189 (1930); *Prindes v. S.S. African Pilgrim,* 266 F. 2nd 128 (4 C.A.); *The Lake Gaither,* 40 F. 2nd 31 (4 C.A.); *The Sonderberg,* 47 F. 2nd 723 (4 C.A.), cert. den. 284 U.S. 618; *McMahon v. U. S.,* 342 U.S. 596, 701; *S.S. Fletero v. Arias,* 206 F. 2nd 267 (4 C.A.); *Monteiro v. Sociedad Maritima San Nicholas S.A.,* 280 F. 2nd 568 (2 C.A.); Norris *"The Law of Seamen"*, Vol. 1, Sec. 47, pp. 76, 77; *Lakes v. Saliaris,* 116 F. 2nd 440 (4 C.A.); *Glandzis v. Callincos,* 140 F. 2nd 111 (2 C.A.); *Butler v. U. S. War Shipping Adm.,* D.C. Pa. 1946, 68 F.S. 441.

2. *The Collective Bargaining Agreement And Its Grievance Machinery Do Not Supersede The Federal Statutes.*

The collective bargaining grievance procedure available to the seaman who is a union member to collect the wages due him is an additional mode of redress for such seaman.

It is of fairly recent vintage, having matured in viable form about the 1930's and 1940's when labor made substantial gains on the economic front. In any case, it came much later than the aforementioned federal statutes. It is submitted that it is error to construe it as a substitute for his statutory right to prompt payment of his wages. Statutes enacted out of considerations of public policy cannot be nullified or circumvented by private agreement. 17 C.J.S., Sec. 201, p. 1001; *School Dist. etc. v. Teacher Retirement etc.*, 95 P. 2nd 720, 163 Or. 103, 125 A.L.R. 720, 96 P. 2nd 419, 163 Or. 103, 125 A.L.R. 727; *Housing Authority etc. v. Lira* (Texas) Civ. App. 282 S.W. 2nd 746.

For the reasons already presented under the jurisdictional point, the cases cited by the petitioner are not supportive of its position because the rights there stemmed from a collective bargaining agreement and not from federal statutes as is true in *Arguelles*.

The phenomenom of a double remedy available to the seaman is not unique and is in keeping with the established and benign tradition of treating the seaman as a ward of the admiralty. Unlike his counterpart on land, the seaman has both the right to compensation (maintenance and cure) and to damages (Jones Act remedy, 46 U.S.C.A., Section 688) on account of personal injuries suffered in the service of the ship.

The existence of the double redress is a salutary factor since it serves to implement public policy which is to insure prompt payment of seaman's wages.

While it may require more attention from the shipowner or ship operator because of the additional redress through collective bargaining, nevertheless the seaman had the statutory right before the union contract was in being. The existence of the federal remedy serves to alert both

of the bargaining parties to handle wage claim matters promptly and in good faith. Should the seaman elect the court remedy, the shipowner has the right to his day in court and to show justification for delay, if he has any.

While collective bargaining has improved the lot of the seaman, his calling is still "an arduous and perilous service" and he is needed "for the commercial service and maritime defense of the nation." Delays and often prolonged ones occur in collective bargaining — what with numerous grievance steps and finally arbitration — if the *parties* (the union and management) agree to have it and it is not infrequent for the union to refuse arbitration requested by its member. Delays are particularly true of the maritime industry where the personae dramatis are frequently absent at sea or in foreign ports. And there are always present the few but less reliable and marginal employers whose delay in payment of the seaman's wages might mean no payment eventually. The national welfare should be the paramount consideration and the seaman should be encouraged to follow his calling. Therefore, the seaman's statutory remedy should not be scuttled in favor of contractual redress through collective bargaining. Both remedies should be available to the seaman.

However, the statutory remedy must be available without first resorting to the contractual one, else its objective of prompt payment is defeated. The remedy must be available at the exclusive election of the seaman, which was the intent behind the statute.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

I. DUKE AVNET,
Counsel for Respondent.

Dated: Baltimore, Maryland
July 23, 1969.